

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OPEN TEXT S.A.,

Plaintiff,

v.

ALFRESCO SOFTWARE LTD, et al.,

Defendants.

Case No. [13-cv-04843-JD](#)

**ORDER ON JOINT MOTION FOR
LETTERS ROGATORY**

Re: Dkt. No. 185

The Court has reviewed the defendants' joint submission of proposed letters rogatory for discovery in Canada. Dkt. No. 185. Defendants and plaintiff continue to show a disappointing inability to work out discovery disputes without the Court's intervention. The Court has spent an unnecessary amount of time and energy resolving issues that counsel for the parties should have been able to solve on their own. No further filings on the letters rogatory will be permitted other than submission of the revised documents described at the end of this order.

The Court has reviewed the defendants' proposed document requests and deposition topics. Several of the requests and topics are seriously overbroad and lack reasonable particularity. Several also strike the Court as less than important to the claims at issue here. To make the Canadian discovery process efficient, and to avert gamesmanship in litigating discovery disputes before a Canadian court, the Court orders these modifications:

Addendum A

RFP 1: Change the first sentence to "All Documents for the Groupware Patents showing the conception . . .".

RFP 2: This request is barred.

RFP 4: This request is barred.

1 RFP 5: Change “refer to” to “show.”

2 RFP 6: Change the first sentence to “All Documents in Your possession that constitute
3 Prior Art . . .”; change “refer or relate to” to “show.”

4 RFP 9: Change to “All Documents about the Box Action and/or the Alfresco action other
5 than attorney-client communications or attorney work product.”

6 RFP 11: This request is barred.

7 RFP 12: Change the first sentence to “All Documents as they existed on or before October
8 31, 1996, constituting . . .”; change “referring to” to “for.”

9 RFP 13: This request is barred.

10 RFP 17: This request is barred.

11 RFP 18: This request is barred.

12 RFP 19: Change “concerning” to “showing.”

13 **Addendum B**

14 RFP 2: Change “referring” to “discussing.”

15 RFP 3: Change “referring” to “discussing.”

16 RFP 5: Change “related to” to “showing”; delete request for litigation documents.

17 RFP 9: Change “that refer to” to “showing.”

18 RFP 11: Change first sentence to “Document sufficient to show the content of Your
19 representations to . . .”.

20 RFP 12: This request is barred.

21 RFPs 15-16: These requests are barred.

22 RFP 20: Change “concerning” to “showing.”

23 RFP 21: Change “refer to” to “discuss.”

24 RFP 22: This request is barred.

25 RFPs 24-27: Only terms (1) and (2) are permitted.

26 **Addendum C**

27 Topic 1: Rephrase as “Any actual, contemplated or proposed transfer or rights in or under
28 the Patents -in-Suit or the patented technologies.” Delete the rest of the topic.

1 Topic 3: This is possibly appropriate as a document request but not a deposition topic at
2 this level of specificity. Limit to "U.S. sales of Embodying Products."

3 Defendants are ordered to submit addendums that conform to these rulings. Defendants
4 are also ordered to provide the Court with a Word version of the letter rogatory that it can edit.
5 Email the Word version to the Court's address for proposed orders: jdpo@cand.uscourts.gov. The
6 deadline for these submissions is September 11, 2014.

7 For the guidance of all parties, the Court expects the discovery in Canada to proceed
8 briskly and efficiently. As the Court has advised the parties on several occasions, the case
9 management and trial dates will not be extended to accommodate discovery delays. The Court
10 will hold accountable any party that tries to exploit the international wrinkles of proceeding in
11 Canada in a way that unfairly delays or blocks another party from reasonable discovery. The
12 Court will impose sanctions on any obstructionist party, including evidentiary and issue preclusion
13 sanctions in addition to monetary sanctions.

14 **IT IS SO ORDERED.**

15 Dated: September 4, 2014

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18 JAMES DONATO
19 United States District Judge
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